

IN THE SUPREME COURT OF THE STATE OF DELAWARE

HERBERT AIKEN,	§
	§ No. 691, 2010
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Sussex County
STATE OF DELAWARE,	§ Cr. ID No. 0708018692
	§
Plaintiff Below-	§
Appellee.	§

Submitted: November 15, 2010

Decided: November 18, 2010

Before **HOLLAND, BERGER** and **RIDGELY**, Justices

**ORDER**

This 18<sup>th</sup> day of November 2010, it appears to the Court that:

(1) On October 27, 2010, the Court received the appellant's notice of appeal from the Superior Court's violation of probation sentencing order, dated and docketed on September 17, 2010. Pursuant to Supreme Court Rule 6, a timely notice of appeal from the September 17, 2010 order should have been filed on or before October 18, 2010.

(2) On October 27, 2010, the Clerk of the Court issued a notice pursuant to Rule 29(b) directing the appellant to show cause why the appeal should not be dismissed as untimely filed. The appellant filed his response to the notice to show cause on November 4, 2010. He states that the United

States postal service failed to deliver his notice of appeal to the Court in a timely fashion. In its reply, the State argues that, even if true, this does not excuse the appellant's untimely filing.

(3) Pursuant to Rule 6(a)(iii), a notice of appeal must be filed within thirty days after entry upon the docket of the judgment or order being appealed. Time is a jurisdictional requirement.<sup>1</sup> A notice of appeal must be received by the Office of the Clerk within the applicable time period in order to be effective.<sup>2</sup> An appellant's *pro se* status does not excuse a failure to comply strictly with the jurisdictional requirements of Rule 6.<sup>3</sup> Unless the appellant can demonstrate that the failure to file a timely notice of appeal is attributable to court-related personnel, his appeal may not be considered.<sup>4</sup>

(4) There is nothing in the record before us reflecting that the appellant's failure to file a timely notice of appeal is attributable to court-related personnel. Consequently, this case does not fall within the exception to the general rule that mandates the timely filing of a notice of appeal. Thus, the Court concludes that this appeal must be dismissed.

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<sup>1</sup> *Carr v. State*, 554 A.2d 778, 779 (Del. 1989).

<sup>2</sup> Supr. Ct. R. 10(a).

<sup>3</sup> *Carr v. State*, 554 A.2d at 779.

<sup>4</sup> *Bey v. State*, 402 A.2d 362, 363 (Del. 1979).

NOW, THEREFORE, IT IS ORDERED, pursuant to Supreme Court Rule 29(b), that the appeal is DISMISSED.

BY THE COURT:

/s/ Randy J. Holland  
Justice